

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,

No. 2:97-cr-00040 WBS

Plaintiff,

v.

ORDER

LEONEL RIVERA,

Defendant.

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The court previously denied defendant Leonel Rivera's Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(c) (1) (A), finding that he had not exhausted his administrative remedies by submitting a request to his warden before filing his motion in this court.¹ (Docket Nos. 262, 273).

¹ In so finding, the court noted that while defendant had submitted a request to his warden before filing a motion for compassionate release with this court in 2021, defendant had not made a new request to the Bureau of Prisons before filing his 2023 request, which was based on largely different grounds than the 2021 request. The court also noted that its dismissal was without prejudice to defendant filing a new motion for compassionate release once defendant had exhausted his

1 Defendant now moves for relief from judgment under Federal Rules
2 of Civil Procedure and 59(e) and 60(b) because he purportedly was
3 never served a copy of the government's response to his motion
4 and was "never allowed to reply." (Docket No. 274.)

5 As the court previously noted, the exhaustion
6 requirement for compassionate release motions is mandatory. See,
7 e.g., United States v. Keller, 2 F.4th 1278, 1282 (9th Cir.
8 2021). Defendant does not argue now that he did in fact exhaust
9 his administrative remedies by filing a request for compassionate
10 release with the Bureau of Prisons before filing his motion with
11 the court, and he produces no evidence suggesting he did so. Nor
12 does defendant identify any error in the court's prior ruling,
13 any new evidence, any intervening change in the law, or any other
14 ground justifying reconsideration. Thus, defendant's request for
15 reconsideration will be denied.

16 IT IS THEREFORE ORDERED that defendant's motion for
17 relief under Rule 60(b) and 59(e) (Docket No. 274) be, and the
18 same hereby is, DENIED.

19 Dated: November 1, 2023


WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE

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28 administrative remedies.